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STATE BUILDING, SAN FRANCISCO 94102

April 23, 1973

CV 73/47 IL

Formal Opinion on Parallel Programs

Mr. H. Edward White
Director
Department of Industrial Relations
455 Golden Gate Avenue
San Francisco, California 94102

Dear Mr. White:

You have asked our opinion as to whether the Division of Apprenticeship Standards may approve an apprenticeship program even though it parallels an existing apprenticeship agreement in a particular area. We understand that there have been problems between joint apprenticeship committees and potential programs sponsors, who are either refused admission to the existing program or do not wish to be associated with it and prefer to initiate a separate apprenticeship program. You have also asked whether, if the administrator does approve the parallel program, such approval must be confirmed by the Apprenticeship Council before the program may be implemented. Lastly, you have asked us to review and comment on a bulletin covering this subject issued by the Administrator.

We have concluded that parallel programs of the type described in your inquiry may be established and that approval of such programs may be made by the Administrator without confirmation by the Apprenticeship Council.

We have found no specific statute, either state or federal, which deals with the establishment of parallel programs. Where no such specific guidance is available, we must examine the relevant statutes with a view to ascertaining the intent of the Legislature. Select Base Materials v. Board of Equalization, 51 Cal.2d 640 (1959). The prime factor in interpreting the statutes is the objective sought to be achieved by the Legislature. Rock Creek Etc. Dist. v. County of Calaveras, 29 Cal.2d 7 (1946). This, in turn, may be ascertained from a consideration of the entire enactment (People v. Sciortino, 175 Cal.App.2d Supp. 905 (1959)) which in this instance is the Shelley-Maloney Apprentice Labor Standards Act of 1939 (Lab. Code §§ 3070-3090).

The purpose of the Act is to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices and advance their opportunities for profitable employment." Lab. Code § 3071; see 21 Ops.Cal.Atty.

what criteria does DAS utilize to determine need for economic reasons?

Gen. 161 (1953). The legislation is designed not only to impose minimum standards with respect to apprenticeship training, but also to fulfill the need of the State of California for skilled workers in its economy. This is made clear by the report of a legislative subcommittee which stated in part, ". . . the subcommittee sought for means to develop an apprenticeship program capable of meeting the present and future needs of this state for a well-trained work force." See Final Report of Assembly Interim Committee on Industrial Relations Assembly Interim Committee Report, 1963-1965, Vol. 2, #9, pp 104-105. 1/

Mindful of the twin objectives of promoting the welfare of industry and apprentices and supplying skilled workers for California's burgeoning economy, we have concluded that the establishment of parallel programs of the type you described would be permitted under the relevant statutes and regulations. We can find no prohibition, either express or implied, which would forbid the establishment of such programs where they are necessary. In this connection, Labor Code section 3075 is relevant. That section states, "Local or state joint apprenticeship committees may be selected by the employer and employee organizations, in any trade in the state or in a city or trade area, whenever the apprenticeship training needs of such trade justifies such establishment. Such joint apprenticeship committee shall be composed of an equal number of employer and employee representatives."

A number of pertinent observations may be made about this section. It is to be noted that insofar as the formation of joint apprenticeship committees is concerned, the language is permissive and states that such committees "may be selected by the employer and the employee organizations." We have previously concluded that this does not preclude the establishment of an apprenticeship program without a joint apprenticeship committee. 14 Ops. Cal.Atty.Gen. 203.

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1. These objectives are amplified in the regulations set forth in the California Administrative Code. Section 204 of Title 8 of the Code contains a declaration of policy respecting apprenticeship. Subsection (c) thereof states that "apprenticeship should be made available to qualified youths regardless of sex, race, creed, or color." Subsection (e) states that the basic objectives of the system "are best achieved through voluntarily accepted obligations." Section 206 states that "the purpose and intent of the California Apprenticeship Council in establishing labor standards for wages, hours, and working conditions and in issuing rules and regulations on apprenticeship is to encourage the establishment and operation of apprenticeship programs, which are accredited as meeting these standards by the approval of the administrator of apprenticeship."

Second, the section states that such committees may operate either in a trade in the state or in a city or trade area, depending on the need of the trade. In our view, the critical phrase in this portion of the section is "need of the trade."

We believe that need in the context of establishing apprenticeship programs can depend on the nature and composition of the joint apprenticeship committee already in place in that area. Should the current joint apprenticeship committee act in an arbitrary fashion, or be cliquish and unresponsive to the needs of the area, it may well be that the trade in that area is not being properly served by the committee. It is also possible that a well-meaning committee is simply unable to service the large number of employers and employees in an area and that the area, both in geographical size and in numbers of persons affected, could easily accommodate one or more additional apprenticeship programs.

These examples of relevant considerations are not meant to be exhaustive or to establish guidelines for the Division. They are used merely to illustrate the principle that "need" is a flexible concept which would permit the Administrator under appropriate circumstances to authorize the establishment of parallel programs. The criteria he uses may well include a number of the considerations outlined above but will also indubitably include matters within his technical expertise. In any event, we have found nothing in the legislation or its history which would indicate that the apprenticeship program in a given area was to be the exclusive province of the joint apprenticeship committee which arrived there first.

While it does not appear that we have been asked to examine this precise question on any other occasion, nevertheless, in 1946, we were asked whether a plant joint apprenticeship committee serving a number of trades was permissible under the state apprenticeship law. We concluded at that time that the establishment of a local apprenticeship committee within a single plant for training apprentices "in the several skills employed by that plant" would be permissible. 8 Ops.Cal.Atty.Gen. 186, 187. The analogy to the instant situation is apparent. An apprenticeship program limited to a particular plant would, in many cases, simply be a program which is parallel to an apprenticeship committee which serves the general area where that plant is located. If that type of program is acceptable, we can see no reason why the type of parallel program outlined in your request would be objectionable.

Thus we conclude that the type of parallel programs described by you in your written inquiry would fall within the options available for the establishment of apprenticeship programs in the state. This conclusion does not mean that apprenticeship programs will proliferate like mushrooms on the industrial landscape. We believe that the Division of Apprenticeship will be able to exercise its discretion and control in such a manner as to avoid this result. This is indicated by its statement that as a standard, the Division will encourage the establishment of one program in each apprenticeable trade in each geographical area. See DAS Bulletin No. 73-4, Feb. 14, 1973.

Your second inquiry was whether approval of a parallel program by the Administrator is effective only if confirmed by the Apprenticeship Council. In this regard, a distinction must be drawn between approval of an apprenticeship program and approval of an apprenticeship agreement. The latter, which is the subject of Labor Code sections 3077, 3078, and 3079, is an agreement entered into between an individual apprentice and his sponsors. Labor Code section 3079 makes clear that where there is no joint apprenticeship committee or collective bargaining agreement an apprenticeship agreement must be approved not only by the Administrator but also by the Council.

With respect to approval of apprenticeship programs, however, there is no statutory requirement of Council approval. Indeed, the regulations assume that approval of such programs may be made solely by the Administrator. (8 Cal.Admin. Code §§ 206, 211, and 212.) We conclude, therefore, that the Administrator may approve parallel apprenticeship programs without submitting the same for approval by the Council.

You also asked that we examine and comment on the Division's Information Bulletin #73-4 which sets forth the Division's policy concerning parallel programs. We have reviewed the Bulletin and see no legal objection to the policies set forth in it. We do not feel, however, that the case of Gregory Electric Co. v. United States Dept. of Labor, 268 2d.Supp. 987 (D.C.S.C. 1967) should be cited in support of any of the propositions set forth in the Bulletin. In Gregory Electric Co., a group of non-union employers sought to require the Department of Labor to approve and register their proposed apprenticeship program for the electrical trade. Apparently, there was already in existence an apprenticeship program in the geographical area where the plaintiffs operated their business. The court noted that the apprenticeship bureau of the Department had issued a circular indicating that the

Department would assist such non-union groups in the establishment of their own programs. When the bureau refused to approve the program of the plaintiffs, they sued to compel such approval based on the circular which had been distributed. In essence, the court ruled that the plaintiffs had no standing to sue and that the question of whether or not a particular program would be approved, was a matter committed to the discretion of the agency. (See 268 F.Supp. at 991.) The court ruled further that the circular could not bind the Secretary of Labor or create any legal rights in the plaintiffs and that any other conclusion "would impair the exercise of the discretion of the agency in its decision-making process." (268 F.Supp. at 994)

Nowhere in the Gregory Electric Co. decision does it appear why the agency refused to approve the application for the additional apprenticeship program. We do not believe it would be productive to speculate on reasons for the denial and we think it is reasonable to conclude that had the bureau wished to approve the program, it had ample authority to do so. Thus, although the court notes that the procedure of the bureau is to "encourage, as a standard, the establishment of one apprenticeship program in a trade in each area,", this does not mean that an existing program is necessarily to be the exclusive program in an area.

Paragraph 1 of the Bulletin is couched in langauge which is taken verbatim from the portion of the Gregory Electric Co. decision above quoted. We do not believe that the guidelines spelled out in your paragraph #1 are objectionable, but the citation of the Gregory Electric Co. case as authority for establishing the guidelines is misleading. The court's mention of the Department of Labor's policy concerning one program for an area is dictum and is not germane to its holding. Accordingly, we would recommend deletion of this reference in paragraph # 1 of the Bulletin. Similarly, in paragraph # 4 of the Bulletin, we believe the citation to Gregory Electric Co. should be deleted.

In addition, a statement made in paragraph # 4 is slightly misleading. The paragraph states, "The Division's obligation is to assure that all programs are geared to safeguard the welfare of the apprentices." The fact is that section 3071 of the Labor Code states that the purpose of the Apprenticeship Council (and by inference the apprenticeship program) is to promote and develop the welfare of the apprentice and industry." In fairness, the words "and industry" should be included in the subject paragraph. Otherwise, an impression is given that

the Department has a mandate to favor apprentices over industry.

Apart from the suggestions noted, we believe the policy promulgated by the Bulletin is sensible and within the Division's authority.

Very truly yours,

EVELLE J. YOUNGER
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ASHER RUBIN
Deputy Attorney General

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
455 Golden Gate Avenue
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INFORMATION BULLETIN NO. 73-4 February 14, 1973

REVISED DAS POLICY - PARALLEL PROGRAMS

PARALLEL PROGRAMS, for purposes of this bulletin, means apprenticeship programs (unilateral or joint) established within the same geographical area where local jointly sponsored apprenticeship programs are approved and actively operating.

1. The DAS shall encourage, as a standard, the establishment of one apprenticeship program in each apprenticeable trade in each geographical area, such program to be jointly sponsored by labor and management. (Reference: Gregory Electric v. U.S.D.L.)

2. A need for a second joint apprenticeship committee may exist if the apprentice training needs of those proposing it cannot be absorbed into an existing program. (Reference: Labor Code Section 3075; Administrative Code, Section 208)

3. The DAS shall consult with existing apprenticeship committees in connection with proposed standards in their area and occupation submitted by employers or employees not represented on such local apprenticeship committees. The existing program sponsors will be encouraged to accept participation of non-signatory employers. We suggest the use of a "letter of understanding with the JAC" as an instrument to facilitate participation of employers who are not signatory to a collective bargaining agreement. (Reference: Section 213 of the Administrative Code)

4. The Division's obligation is to assure that all programs are geared to safeguard the welfare of the apprentices (reference Gregory Electric v. U.S.D.L. and Section 3071 of the Labor Code).

Prospective apprenticeship program sponsors who are not signatory to the collective bargaining agreement shall be encouraged to join an existing program.

If the prospective sponsor is qualified to train and if the existing program sponsor refuses to accept the proposal without good and sufficient reason, DAS will carefully weight all factors in proceeding to establish a parallel program.

The apprenticeship standards of a second program, including length of training, work processes, and all wages and fringe benefits, shall be not less than those already established and prevailing for apprentices in the trade and area.

All programs must establish selection procedures in accordance with Section 3076 of Chapter 4 of Division 3 of the Labor Code and the Administrative Code, Title 8, Chapter 2.

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DIVISION OF APPRENTICESHIP STANDARDS
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INFORMATION BULLETIN NO. 73-3

FEBRUARY 1, 1973

DAS POLICY - DUAL AND PARALLEL PROGRAMS

1. The DAS shall encourage, as a standard, the establishment of one apprenticeship program in each apprenticeable trade in each geographical area, such program to be jointly sponsored by labor and management. (Reference: Gregory Electric v. U.S D.L.)

2. A need for a second joint apprenticeship committee may exist if the apprentice training needs of those proposing it cannot be absorbed into an existing program. (Reference: Labor Code Section 3075; Administrative Code, Section 208)

3. The DAS shall consult with existing apprenticeship committees in connection with proposed standards in their area and occupation submitted by employers or employees not represented on such local apprenticeship committees. The existing program sponsors are to be encouraged to accept participation of non-signatory employers. We suggest the use of a "letter of understanding with the JAC" as an instrument to facilitate participation of employers who are not signatory to a collective bargainin agreement. (Reference: Section 213 of the Administrative Code)

If non-union employers who are qualified to train refuse after consultation with DAS, to join an existing joint program or the existing program will not permit such participation, the DAS will assist them in the establishment of their own program. The apprentice wage standard of a second program shall not be less than or differ substantially from the prevailing rate for apprentices already established for the trade and area. The DAS has the responsibility of providing impartial services and assistance to all industry whether or not labor-management agreements are involved. The Division's obligation is to assure that such programs are geared to safeguard the welfare of the apprentice. (Reference: Gregory Electric v. U.S.D.L.)

5. The DAS requires an explanation for not approving an employer who subscribes to standards Such statements as "not qualified to train" or "not signatory to a CBA" are not acceptable without further explanation.

6. All legal apprentices shall be enrolled in and participate equally in the classes of related instruction established for the trade and area.

The foregoing policy has been developed and adopted after extensive consultation with legal counsel, representatives of the California Building Trades Council, representatives of the Fresno Building Trades Council, Fresno Sheet Metal JAC; several representatives of Building Industry Association and other contractors.

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